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MEDHA KOTWAL LELE & ORS

v.

UNION OF INDIA & ORS

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SUPREME COURT, INDIA
(2013) 1 SUPREME COURT CASES 297
RM LODHA J
ANIL R DAVE J
RANJAN GOGOI J

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[WRIT PETITIONS (CRL) NOS: 173-77 OF 1999†]
WITH TC (C) NO: 21 OF 2001 AND
CIVIL APPEALS NOS: 5009-10 OF 2006
19 OCTOBER 2012

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[CONSTITUTIONAL LAW] *Constitution of India - Arts. 21, 16, 14, 19, 15(1), 15(3), 42, 51-A(a), 51-A(e), 32 and 141 - Sexual harassment of women at workplaces - Prevention of, by proper mechanism and compliance with directions issued in Vishaka, (1997) 6 SCC 241 - Further directions issued - Taking note that some States were not*

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complying with Vishaka Directions, adequate number of Complaints Committees directed to be expeditiously constituted at all levels, taluka, district and State, to inquire into allegations of sexual harassment - State and UT-wise progress reviewed - Default by some of the States and UTs indicated - Vishaka Directions in their true substance and spirit, directed

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to be implemented so that women could work with dignity, decency and due respect in a safe and secure workplace - Despite India being the largest democracy and despite limitless potential of women and their contribution in various fields, concern expressed over lack of proper mechanisms and protective laws for women - Matter disposed of, with

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direction that aggrieved parties could approach High Court concerned in case of non-compliance with directions issued in Vishaka case and herein - Human and Civil Rights - Protection of Women Against Sexual Harassment at Workplace Bill, 2010

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[CONSTITUTIONAL LAW] *Constitution of India - Arts. 21, 16, 14, 19, 15(1), 15(3), 42, 51-A(a), 51-A(e), 32 and 141 - Sexual harassment of women at workplaces - Sexual Harassment Complaints Committee - Desirable constitution of - Each Complaints Committee to be headed by a woman - As far as possible an independent member to be*

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associated with each Complaints Committee

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† Under Article 32 of the Constitution of India

[CONSTITUTIONAL LAW] *Constitution of India - Arts. 21, 16, 14, 19, 15(1), 15(3), 42, 51-A(a), 51-A(e), 32 and 141 - Sexual harassment of women at workplaces - Sexual Harassment Complaints Committee - Report of Complaints Committee - Nature, effectiveness of and desirable action to be taken based thereupon, clarified - Report of Complaints Committee, held, shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action but shall be treated as a finding/report in inquiry into misconduct of delinquent - Until appropriate legislation is in place, manner in which a victim is to be given protection against harasser indicated - For this government and public sectors directed to carry out requisite amendment is CSC rules (Civil Service Conduct Rules) - For private sector, Standing Orders under the Industrial Employment (Standing Orders) Act, 1946 directed to be amended - Service Law - Departmental enquiry - Sexual Harassment Complaints Committee - Nature of report of*

[CONSTITUTIONAL LAW] *Constitution of India - Arts. 21, 16, 14, 19, 15(1), 15(3), 42, 51-A(a), 51-A(e), 32 and 141 - Sexual harassment of women at workplaces - Organisations to which complaint mechanism as laid down in Vishaka, (1997) 6 SCC 241 should be extended - Bar Council of India and other statutory professional governing bodies directed to deal with sexual harassment complaints in accordance with Vishaka Directions - Professions and Professionals - Sexual harassment - Directions issued for extension of Vishaka Directions to*

In order to deal with the harassment of women at workplaces, the Supreme Court in *Vishaka* case, (1997) 6 SCC 241 issued certain directions to amend/revise/enact laws in the government, private and public sectors. The Supreme Court directed that irrespective of existing law, a complaints mechanism and a Complaints Committee should be created in the said sectors to deal with complaints of harassment of women working there.

The said directions had been neglected and were not implemented in their proper prospective.

Issuing further directions and disposing of the writ petitions and appeals, the Supreme Court

Held:

Even after 15 years of the *Vishaka* judgment dated 13-8-1997, many women still struggle to have their most basic rights protected at workplaces. The belief of the Constitution Framers in fairness and justice for women is yet to be fully achieved at the workplaces in the country. The attitude of neglect in establishing

A an effective and comprehensive mechanism in letter and spirit of *Vishaka* Directions by the States as well as employers in the private and public sector has defeated the very objective and purpose of the directions. The Supreme Court by order dated 26-4-2004, (2013) 1 SCC 311 directed that an amendment similar
B to that of Central Civil Services (Conduct) Rules, 1964 as directed in *Vishaka* case should be carried out in the Industrial Employment (Standing Orders) Rules under the Industrial Employment (Standing Orders) Act, 1946. The indicated States and Union Territories are: (a) not amending the Civil Services
C Conduct Rules, (b) not amending the Standing Orders, and (c) not forming Sexual Harassment Complaints Committees as envisaged in *Vishaka* and orders dated 26-4-2004, (2013) 1 SCC 311 and 17-1-2006, (2013) 1 SCC 312. (paras 1 and 4 to 39)

D *Vishaka v. State of Rajasthan, (1997) 6 SCC 241 : 1997 SCC (Cri) 932*
Medha Kotwal Lele v. Union of India, (2013) 1 SCC 311
Medha Kotwal Lele v. Union of India, (2013) 1 SCC 312, reiterated
Beijing Declaration and Platform for Action;
Protection of Women Against Sexual Harassment at Workplace Bill, 2010, referred to

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While there is substantial gender parity in local self-government institutions, the representation of women in Parliament and the Legislative Assemblies is dismal. *Vishaka* Directions should be implemented not only in form but substance and spirit thereby
F enabling working women to work with dignity, decency and due respect. There is still no proper mechanism in place to address the complaints of sexual harassment of the women lawyers in Bar Associations, lady doctors and nurses in the medical clinics and nursing homes, women architects working in the offices of the
G engineers and architects and so on and so forth. As the largest democracy in the world, violence against women must be combated. The existing laws, if necessary, should be revised and appropriate new laws be enacted by Parliament and the State Legislatures to protect women from any form of indecency,
H indignity and disrespect at all places (in their homes as well as outside), prevent all forms of violence-domestic violence, sexual assault, sexual harassment at the workplace, etc.-and provide new initiatives for education and advancement of women and girls in all spheres of life. After all they have limitless potential. Lip service,
I hollow statements and inert and inadequate laws with sloppy enforcement are not enough for true and genuine upliftment of our half most precious population-the women. (paras 40 to 43)

Seema Lepcha v. State of Sikkim, (2013) 11 SCC 641, relied on
United Nations Gender Equality Index, referred to

The *Vishaka* Directions should not remain symbolic and the following further directions are necessary until legislative enactment on the subject is in place. The States and Union Territories which have not yet carried out adequate and appropriate amendments in their respective Civil Services Conduct Rules (by whatever name these Rules are called) shall do so within two months by providing that the report of the Sexual Harassment Complaints Committee shall be deemed to be an inquiry report in a disciplinary action under such Civil Services Conduct Rules. The findings and the report of the Sexual Harassment Complaints Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action but shall be treated as a finding/report in an inquiry into the misconduct of the delinquent. The States and Union Territories which have not carried out amendments in the Industrial Employment (Standing Orders) Rules shall now carry out amendments on the same lines as noted above, within two months. The States and Union Territories shall form an adequate number of Sexual Harassment Complaints Committees so as to ensure that they function at taluka level, district level and State level. Those States and/or Union Territories which have formed only one Committee for the entire State shall now form an adequate number of Complaints Committees within two months from today. Each of such Complaints Committees shall be headed by a woman and as far as possible in such Committees an independent member shall be associated. (paras 44.1 to 44.3)

The State functionaries and private and public sector undertakings/organisations/bodies/institutions, etc. shall put in place sufficient mechanism to ensure full implementation of *Vishaka* Directions and further provide that if the alleged harasser is found guilty, the complainant victim is not forced to work with/under such harasser, and where appropriate and possible the alleged harasser should be transferred. Further provision should be made that harassment and intimidation of witnesses and the complainants shall be met with severe disciplinary action. The Bar Council of India shall ensure that all Bar Associations in the country and persons registered with the State Bar Councils follow *Vishaka* Directions. Similarly, the Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and other statutory institutes shall ensure that the organisations, bodies, associations, institutions and persons registered/affiliated

with them follow the *Vishaka* Directions. To achieve this, necessary instructions/circulars shall be issued by all the statutory bodies such as the Bar Council of India, Medical Council of India, Council of Architecture, Institute of Company Secretaries within two months from today. On receipt of any complaint of sexual harassment at any of the places referred to above the same shall be dealt with by the statutory bodies in accordance with *Vishaka* Directions and the directions issued in the present order. (paras 44.4 and 44.5)

If there is any non-compliance or non adherence to *Vishaka* Directions or orders of the Supreme Court in this regard, it will be open to the aggrieved persons to approach the respective High Courts. The High Court of such State would be in a better position to effectively consider the grievances raised in that regard. (para 45)

SS-D/51007/CRLV

Advocates who appeared in this case:

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Chronological list of cases cited on page(s): A

Seema Lepcha v. State of Sikkim (2013) 11 SCC 641
Medha Kotwal Lele v. Union of India (2013) 1 SCC 312
Medha Kotwal Lele v. Union of India (2013) 1 SCC 311
Vishaka v. State of Rajasthan (1997) 6 SCC 241 : 1997 SCC (Cri) 932

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JUDGMENT

RM Lodha J:

[1] *Vishaka*[1] judgment came on 13-8-1997. Yet, 15 years after C the guidelines were laid down by this Court for the prevention and redressal of sexual harassment and their due compliance under Article 141 of the Constitution of India until such time appropriate legislation was enacted by Parliament, many women still struggle to have their most basic rights protected at D workplaces. The statutory law is not in place. The Protection of Women Against Sexual Harassment at Work Place Bill, 2010 is still pending in Parliament though Lok Sabha is said to have passed that Bill in the first week of September, 2012. The belief of the Constitution Framers in fairness and justice for women is E yet to be fully achieved at the workplaces in the country.

[2] This group of four matters-in the nature of public interest litigation-raises principally the grievance that women continue to be victims of sexual harassment at workplaces. The guidelines in F *Vishaka*[1] are followed in breach in substance and spirit by the State functionaries and all other concerned. The women workers are subjected to harassment through legal and extra-legal methods and they are made to suffer insult and indignity.

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[3] The Beijing Declaration and Platform for Action, *inter alia*, states:

> 112. ... Violence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms. ... In all societies, to a greater or lesser H degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture.

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1. *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 : 1997 SCC (Cri) 932

[4] *Vishaka*[1] Guidelines require the employers at workplaces as well as other responsible persons or institutions to observe them and ensure the prevention of sexual harassment to women. These guidelines read as under: (SCC pp. 252-54, para 17)

1. Duty of the employer or other responsible persons in workplaces and other institutions

It shall be the duty of the employer or other responsible persons in workplaces or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

2. Definition

For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

(a) physical contact and advances;
(b) a demand or request for sexual favours;
(c) sexually-coloured remarks;
(d) showing pornography;
(e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances whereunder the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

1. *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 : 1997 SCC (Cri) 932

3. Preventive steps

All employers or persons in charge of workplace whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

(a) Express prohibition of sexual harassment as defined above at the workplace should be notified, published and circulated in appropriate ways.

(b) The rules/regulations of government and public sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

(c) As regards private employers steps should be taken to include the aforesaid prohibitions in the Standing Orders under the Industrial Employment (Standing Orders) Act, 1946.

(d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at workplaces and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

4. Criminal proceedings

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure that victims, or witnesses are not victimised or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

5. Disciplinary action

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

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6. Complaint mechanism

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organisation for redress of the complaint made by the victim. Such complaint mechanism should ensure time-bound treatment of complaints.

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7. Complaints Committee

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The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality.

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The Complaints Committee should be headed by a woman and not less than half of its members should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

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The Complaints Committee must make an annual report to the government department concerned of the complaints and action taken by them.

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The employers and person in-charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the government department.

8. Workers' initiative

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Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in employer-employee meetings.

9. Awareness

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Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

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10. Third-party harassment

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in-charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

11. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in private sector.

12. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993. (emphasis in original)

[5] In these matters while highlighting a few individual cases of sexual harassment at the workplaces, the main focus is on the lack of effective implementation of *Vishaka*[1] guidelines. It is stated that the attitude of neglect in establishing effective and comprehensive mechanism in letter and spirit of *Vishaka*[1] guidelines by the States as well as the employers in private and public sector has defeated the very objective and purpose of the guidelines.

[6] In one of these matters, *Medha Kotwal Lele*[2], this Court has passed certain orders from time to time. Notices were issued to all the State Governments. The States have filed their responses. On 26-4-2002, after hearing the learned Attorney General and the learned counsel for the States, this Court directed as follows: (SCC p. 311, para 2)

2. ... Complaints Committee as envisaged by the Supreme Court in its judgment in *Vishaka* case[1], SCC at p. 253, will be deemed to be an inquiry authority for the purposes of the Central Civil Services (Conduct) Rules, 1964 (hereinafter called "the CCS Rules") and the report of the Complaints Committee shall be deemed to be an inquiry report under the CCS Rules. Thereafter the disciplinary authority will act on the report in accordance with the Rules.

1. *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 : 1997 SCC (Cri) 932
2. *Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 311

A This Court further directed in the order dated 26-4-2002 that similar amendment shall be carried out in the Industrial Employment (Standing Orders) Rules. As regards educational institutions and other establishments, the Court observed that further directions would be issued subsequently.

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[7] On 17-1-2006[3] this Court in a couple of these matters passed the following order: (SCC p. 312, paras 1-3)

> 1. These matters relate to the complaints of sexual harassment in working places. In *Vishaka v. State of Rajasthan*[1] this
C Court issued certain directions as to how to deal with the problem. All the States were parties to that proceedings. Now, it appears that the directions issued in *Vishaka* case[1] were not properly implemented by the various States/ departments/institutions. In a rejoinder-affidavit filed on behalf
D of the petitioners, the details have been furnished. The counsel appearing for the States submit that they would do the needful at the earliest.
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> 2. It is not known whether the Committees as suggested in *Vishaka* case[1] have been constituted in all the Departments/
E Institutions having members of staff of 50 and above and in most of the district-level offices in all the States, members of the staff working in some offices would be more than 50. It is not known whether the Committees as envisaged in *Vishaka* case[1] have been constituted in all these offices. The number of complaints received and the steps taken in these
F complaints are also not available. We find it necessary to give some more directions in this regard:
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> 2.1. We find that in order to coordinate the steps taken in this regard, there should be a State-level officer i.e. either the
G Secretary of the Women and Child Welfare Department or any other suitable officer who is in-charge and concerned with the welfare of women and children in each State. The Chief Secretaries of each State shall see that an officer is appointed as a nodal agent to collect the details and to give suitable directions whenever necessary.
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H 2.2. As regards factories, shops and commercial establishments are concerned, the directions are not fully complied with. The Labour Commissioner of each State shall take steps in

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3. *Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 312
1. *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 : 1997 SCC (Cri) 932

that direction. They shall work as nodal agency as regards shops, factories and commercial establishments are concerned. They shall also collect the details regarding the complaints and also see that the required committee is established in such institutions.

3. The counsel appearing for each State shall furnish the details as to what steps have been taken in pursuance of these directions within a period of eight weeks. Details may be furnished as shown in the format furnished by the petitioners in the paper-books. A copy of this format shall form part of the order. The above facts are required at the next date of hearing. A copy of this order be sent to the Chief Secretary and the Chief Labour Commissioner of each State for taking suitable action.

[8] From the affidavits filed by the State Governments the following position emerges in respect of each of these States.

Goa

[9] The amendments in the Civil Services Conduct Rules and the Standing Orders have not been made so far.

Gujarat

[10] No amendments in the Civil Services Conduct Rules and the Standing Orders have been made so far. It is not stated that all Complaints Committees are headed by women. There is no information given whether in such committees NGO members have been associated.

NCT of Delhi

[11] The amendments in the Civil Services Conduct Rules have been made. The position about amendments in the Standing Orders has not been clarified. It has not been specified that all Complaints Committees are headed by women.

Himachal Pradesh

[12] There is nothing to indicate that the State of Himachal Pradesh has made amendments in the Civil Services Conduct Rules and the Standing Orders. No details of formation of Complaints Committees have been given.

Haryana

[13] The amendments in the Government Employees (Conduct) Rules, 1966 have been made. However, it is not specified that the amendments in the Standing Orders have been made.

Maharashtra

[14] Necessary amendments in the Maharashtra Civil Services (Conduct) Rules, 1974 have been made. The Labour Commissioner has taken steps for amending the Mumbai Industrial Employment (Permanent Orders) Rules, 1959.

Mizoram

[15] The State of Mizoram has amended the Civil Services Conduct Rules and also constituted the Central Complaints Committee to look into complaints pertaining to cases of sexual harassment of working women at all workplaces for preservation and enforcement. A notification has been issued giving necessary directions to all private bodies.

Sikkim

[16] The amendments in the Civil Services Conduct Rules have been carried out and a notification has been issued for constitution of Complaints Committees by the departments/institutions with 50 or above staff to look into sexual harassment of women at workplaces.

Uttaranchal

[17] The State of Uttaranchal has carried out amendments in the Civil Services Conduct Rules as well as the Standing Orders. The District-level and State-level Complaints Committees have been constituted.

West Bengal

[18] The amendments in the Rules relating to duties, rights and obligations of the government employees have been made. The amendments in the Standing Orders have been carried out. Out of 56 departments of the Government of West Bengal, Complaints Committees have been formed in 48 departments and out of 156 Directorates under the Government, Complaints Committees have been formed in 34 Directorates. Of 24 institutions under the Government, Complaints Committees have been formed in 6.

Madhya Pradesh

[19] Although the State of Madhya Pradesh has made amendments in the Civil Services Conduct Rules but no amendments have been made in the Standing Orders. The Complaints Committees have been constituted in every office of every department right from the Head of the Department level to the district and taluka level. The District Level Committees have been constituted under the Chairmanship of the District Collector. The steps taken by the District Committees are monitored by the nodal departments.

Punjab

[20] The State of Punjab has carried out amendments in the Civil Services Conduct Rules as well as the Standing Orders. 70 Complaints Committees have been constituted at the headquarters of different Directorates and 58 Complaints Committees have been constituted in various field offices.

Orissa

[21] No amendments in the Civil Services Conduct Rules and the Standing Orders have been made.

Andhra Pradesh

[22] The amendments in the Civil Services Conduct Rules and in the Standing Orders have been made.

Karnataka

[23] The amendments in the Civil Services Conduct Rules have been made by the State of Karnataka but no amendments have been made in the Standing Orders. It is stated that in most of the committees, the number of women members is above 50%. The Chairpersons are women and in most of the committees, an outside member i.e. an NGO has been associated.

Rajasthan

[24] The State of Rajasthan has carried out amendments in the Civil Services Conduct Rules but no amendments have been carried out in the Standing Orders.

A **Bihar**

[25] The State of Bihar has made amendments in the Civil Services Conduct Rules but there is nothing to show that amendments in the Standing Orders have been made. However, only one Complaints Committee has been constituted for the entire State.

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Meghalaya

[26] The State of Meghalaya has neither carried out amendments in the Civil Services Conduct Rules nor in the Standing Orders.

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Tripura

[27] The State of Tripura has carried out the amendments in the Civil Services Conduct Rules. There are no Standing Orders applicable in the State. 97 Complaints Committees have been constituted in most of the State Government departments and organisations.

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Assam

[28] The amendments in the Civil Services Conduct Rules have been made but no amendments have been carried out in the Standing Orders.

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Manipur

[29] The State of Manipur has carried out amendments in the Civil Services Conduct Rules, but no definite information has been given regarding amendments in the Standing Orders. Only one Complaints Committee has been formed for the entire State.

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Uttar Pradesh

G **[30]** The amendments both in the Civil Services Conduct Rules and the Standing Orders have been carried out.

Jammu and Kashmir

[31] The State of Jammu and Kashmir has carried out amendments in the Civil Services Conduct Rules. It is stated that steps are being taken for amendments in the Standing Orders.

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Nagaland

[32] The amendments have been carried out in the Civil Services Conduct Rules by the State of Nagaland but no amendments have been carried out in the Standing Orders.

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Arunachal Pradesh

[33] The State of Arunachal Pradesh has neither carried out amendments in the Civil Services Conduct Rules nor in the Standing Orders. There is only one State-level Committee for the entire State of Arunachal Pradesh.

Kerala

[34] Amendments in the Civil Services Conduct Rules and in the Standing Orders have been carried out. There are 52 Complaints Committees in the State. All such committees are headed by women and 50% members of these committees are women and there is representation of NGO members in these committees.

Tamil Nadu

[35] The State of Tamil Nadu has carried out amendments in the Civil Services Conduct Rules. However, no amendments in the Standing Orders have been made so far.

Jharkhand

[36] The State of Jharkhand has carried out amendments in the Civil Services Conduct Rules. However, no amendments in the Standing Orders have been made so far.

[37] From the affidavits filed by the State Governments, it transpires that the States of Orissa, Meghalaya, Himachal Pradesh, Goa, Arunachal Pradesh and West Bengal have amended the Rules relating to duties, public rights and obligations of the government employees but have not made amendments in the Civil Services Conduct Rules. Similarly, the States of Sikkim, Madhya Pradesh, Gujarat, Mizoram, Orissa, Bihar, Jammu and Kashmir, Manipur, Karnataka, Rajasthan, Meghalaya, Haryana, Himachal Pradesh, Assam, NCT of Delhi, Goa, Nagaland, Arunachal Pradesh, Jharkhand and Tamil Nadu have not carried out amendments in the Standing Orders. These States appear to have not implemented the order passed by this Court on 26-4-2004[2] quoted above. The States which have carried out amendments in the Civil Services Conduct Rules and the Standing Orders have

2. *Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 311

not provided that the report of the Complaints Committee shall be treated as a report in the disciplinary proceedings by an inquiry officer. What has been provided by these States is that the inquiry, findings and recommendations of the Complaints Committee shall be treated as a mere preliminary investigation leading to a disciplinary action against the delinquent.

[38] The States like Rajasthan, Meghalaya, Himachal Pradesh, Assam and Jammu and Kashmir seem to have not formed Complaints Committees as envisaged in *Vishaka*[1] guidelines. Some States have constituted only one Complaints Committee for the entire State.

[39] The Union Territories of Andaman and Nicobar Islands, Daman and Diu, Lakshadweep, Dadra and Nagar Haveli and Puducherry have not made amendments in the Standing Orders. The Union Territory of Chandigarh does not seem to have carried out amendments in the Civil Services Conduct Rules. Some of the Union Territories like Dadra and Nagar Haveli and Chandigarh are reported to have not yet formed Complaints Committees. Daman and Diu have formed one Complaints Committee for the Union Territory.

[40] While we have marched forward substantially in bringing gender parity in local self-governments but the representation of women in Parliament and the Legislative Assemblies is dismal as the women represent only 10-11% of the total seats. India ranks 129 out of 147 countries in the United Nations Gender Equality Index. This is lower than all South-Asian countries except Afghanistan. Our Constitution Framers believed in fairness and justice for women. They provided in the Constitution the States' commitment of gender parity and gender equality and guarantee against sexual harassment to women.

[41] The implementation of the guidelines in *Vishaka*[1] has to be not only in form but substance and spirit so as to make available safe and secure environment to women at the workplace in every aspect and thereby enabling the working women to work with

1. *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 : 1997 SCC (Cri) 932

dignity, decency and due respect. There is still no proper mechanism in place to address the complaints of sexual harassment of the women lawyers in Bar Associations, lady doctors and nurses in the medical clinics and nursing homes, women architects working in the offices of the engineers and architects and so on and so forth.

[42] In *Seema Lepcha*[4] this Court gave the following directions:

(i) The State Government shall give comprehensive publicity to the notifications and orders issued by it in compliance with the guidelines framed by this Court in *Vishaka* case[1] and the directions given in *Medha Kotwal* case[3] by getting the same published in the newspapers having maximum circulation in the State after every two months.

(ii) Wide publicity be given every month on Doordarshan Station, Sikkim about various steps taken by the State Government for implementation of the guidelines framed in *Vishaka* case[1] and the directions given in *Medha Kotwal* case[3].

(iii) Social Welfare Department and the Legal Service Authority of the State of Sikkim shall also give wide publicity to the notifications and orders issued by the State Government not only for the government departments of the State and its agencies/instrumentalities but also for the private companies.

[43] As the largest democracy in the world, we have to combat violence against women. We are of the considered view that the existing laws, if necessary, be revised and appropriate new laws be enacted by Parliament and the State Legislatures to protect women from any form of indecency, indignity and disrespect at all places (in their homes as well as outside), prevent all forms of violence-domestic violence, sexual assault, sexual harassment at the workplace, etc.-and provide new initiatives for education and advancement of women and girls in all spheres of life. After all they have limitless potential. Lip service, hollow statements and inert and inadequate laws with sloppy enforcement are not enough for true and genuine upliftment of our half most precious population-the women.

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4. *Seema Lepcha v. State of Sikkim*, (2013) 11 SCC 641
1. *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 : 1997 SCC (Cri) 932
3. *Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 312

[44] In what we have discussed above, we are of the considered view that guidelines in *Vishaka*[1] should not remain symbolic and the following further directions are necessary until legislative enactment on the subject is in place:

44.1. The States and Union Territories which have not yet carried out adequate and appropriate amendments in their respective Civil Services Conduct Rules (by whatever name these Rules are called) shall do so within two months from today by providing that the report of the Complaints Committee shall be deemed to be an inquiry report in a disciplinary action under such Civil Services Conduct Rules. In other words, the disciplinary authority shall treat the report/findings, etc. of the Complaints Committee as the findings in a disciplinary inquiry against the delinquent employee and shall act on such report accordingly. The findings and the report of the Complaints Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action but shall be treated as a finding/report in an inquiry into the misconduct of the delinquent.

44.2. The States and Union Territories which have not carried out amendments in the Industrial Employment (Standing Orders) Rules shall now carry out amendments on the same lines, as noted above in para 44.1 within two months.

44.3. The States and Union Territories shall form adequate number of Complaints Committees so as to ensure that they function at taluka level, district level and State level. Those States and/or Union Territories which have formed only one committee for the entire State shall now form adequate number of Complaints Committees within two months from today. Each of such Complaints Committees shall be headed by a woman and as far as possible in such committees an independent member shall be associated.

44.4. The State functionaries and private and public sector undertakings/organisations/bodies/institutions, etc. shall put in place sufficient mechanism to ensure full implementation of *Vishaka*[1] guidelines and further provide that if the alleged

1. *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 : 1997 SCC (Cri) 932

harasser is found guilty, the complainant victim is not forced to work with/under such harasser and where appropriate and possible the alleged harasser should be transferred. Further provision should be made that harassment and intimidation of witnesses and the complainants shall be met with severe disciplinary action.

44.5. The Bar Council of India shall ensure that all Bar Associations in the country and persons registered with the State Bar Councils follow *Vishaka*[1] guidelines. Similarly, the Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and other statutory institutes shall ensure that the organisations, bodies, associations, institutions and persons registered/affiliated with them follow the guidelines laid down by *Vishaka*[1]. To achieve this, necessary instructions/circulars shall be issued by all the statutory bodies such as the Bar Council of India, Medical Council of India, Council of Architecture, Institute of Company Secretaries within two months from today. On receipt of any complaint of sexual harassment at any of the places referred to above the same shall be dealt with by the statutory bodies in accordance with *Vishaka*[1] guidelines and the guidelines in the present order.

[45] We are of the view that if there is any non-compliance or non adherence to *Vishaka*[1] guidelines, orders of this Court following *Vishaka*[1] and the above directions, it will be open to the aggrieved persons to approach the respective High Courts. The High Court of such State would be in a better position to effectively consider the grievances raised in that regard.

[46] The writ petitions (including TC) and appeals are disposed of as above with no orders as to costs.

1. *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 : 1997 SCC (Cri) 932